

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JESSE SANTOS TEIXEIRA, an	)	Case No. 2:22-cv-02338 WLH (MARx)
individual,	)	[Filed: November 30, 2021]
	)	[Removed: April 07/2022]
Plaintiff,	)	
	)	Hon. Wesley L. Hsu
v.	)	Courtroom 9B
	)	
BMW OF NORTH AMERICA, LLC, a	)	<b>STIPULATED PROTECTIVE</b>
Delaware Limited Liability Company;	)	<b>ORDER</b>
ROBERT A. SMITH, INC., a	)	
California Corporation dba BOB	)	
SMITH BMW; and DOES 1 through	)	DISCOVERY CUT-OFF: 06/30/23
20, inclusive,	)	MOTION CUT-OFF: 07/21/23
	)	TRIAL DATE: 10/03/23
Defendants.	)	

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties

1 acknowledge that this Order does not confer blanket protections on all disclosures  
2 or responses to discovery and that the protection it affords from public disclosure  
3 and use extends only to the limited information or items that are entitled to  
4 confidential treatment under the applicable legal principles. The parties further  
5 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective  
6 Order does not entitle them to file confidential information under seal; Civil  
7 Local Rule 79-5 sets forth the procedures that must be followed and the standards  
8 that will be applied when a party seeks permission from the court to file material  
9 under seal.

10  
11 B. GOOD CAUSE STATEMENT

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13 This action is likely to involve trade secrets, customer and pricing lists  
14 and other valuable research, development, commercial, financial, technical and/or  
15 proprietary information for which special protection from public disclosure and  
16 from use for any purpose other than prosecution of this action is warranted.  
17 Such confidential and proprietary materials and information consist of, among  
18 other things, confidential business or financial information, information regarding  
19 confidential business practices, or other confidential research, development,  
20 or commercial information (including information implicating privacy rights of  
21 third parties), information otherwise generally unavailable to the public, or which  
22 may be privileged or otherwise protected from disclosure under state or  
23 federal statutes, court rules, case decisions, or common law. Accordingly, to  
24 expedite the flow of information, to facilitate the prompt resolution of disputes  
25 over confidentiality of discovery materials, to adequately protect information the  
26 parties are entitled to keep confidential, to ensure that the parties are permitted  
27 reasonable necessary uses of such material in preparation for and in the conduct of  
28 trial, to address their handling at the end of the litigation, and serve the ends of

1 justice, a protective order for such information is justified in this matter. It is the  
 2 intent of the parties that information will not be designated as confidential for  
 3 tactical reasons and that nothing be so designated without a good faith belief that  
 4 it has been maintained in a confidential, non-public manner, and there is good  
 5 cause why it should not be part of the public record of this case.

## 6 7 8 2. DEFINITIONS

9 2.1 Action: Jesse Santos Teixeira v. BMW of North America,  
 10 LLC, Case No. 2:22-cv-02338 WLH (MARx)

11 2.2 Challenging Party: a Party or Non-Party that challenges the  
 12 designation of information or items under this Order.

13 2.3 “HIGHLY CONFIDENTIAL” Information or Items:  
 14 information (regardless of how it is generated, stored or maintained) or tangible  
 15 things that qualify for protection under Federal Rule of Civil Procedure 26(c),  
 16 and as specified above in the Good Cause Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as  
 18 well as their support staff).

19 2.5 Designating Party: a Party or Non-Party that designates  
 20 information or items that it produces in disclosures or in responses to discovery as  
 21 “HIGHLY CONFIDENTIAL.”

22 2.6 Disclosure or Discovery Material: all items or information,  
 23 regardless of the medium or manner in which it is generated, stored, or maintained  
 24 (including, among other things, testimony, transcripts, and tangible things), that are  
 25 produced or generated in disclosures or responses to discovery in this matter.

26 2.7 Expert: a person with specialized knowledge or experience in  
 27 a matter pertinent to the litigation who has been retained by a Party or its counsel  
 28 to serve as an expert witness or as a consultant in this Action.

1                   2.8    House Counsel: attorneys who are employees of a party to this  
2 Action. House Counsel does not include Outside Counsel of Record or any  
3 other outside counsel.

4  
5    3.       SCOPE

6           The protections conferred by this Stipulation and Order cover not only  
7 Protected Material (as defined above), but also (1) any information copied or  
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
9 compilations of Protected Material; and (3) any testimony, conversations, or  
10 presentations by Parties or their Counsel that might reveal Protected Material. Any  
11 use of Protected Material at trial shall be governed by the orders of the trial  
12 judge. This Order does not govern the use of Protected Material at trial.

13  
14    4.       DURATION

15           Event after the final disposition of this litigation, the confidentiality  
16 obligations imposed by this Order shall remain in effect until a Designating Party  
17 agrees otherwise in writing or a court order otherwise directs. Final disposition  
18 shall be deemed to be later of (1) dismissal of claims and defenses in this Action,  
19 with or without prejudice; and (2) final judgment herein after the completion and  
20 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
21 including the time limits for filing any motions or applications for extension of  
22 time pursuant to applicable law.

23  
24    5.       DESIGNATING PROTECTED MATERIAL

25       5.1   Exercise of Restrain and Care in Designating Material for Protection.  
26 Each Party or Non-Party that designates information or items for protection under  
27 this Order must take care to limit any such designation to specific material that  
28 qualifies under the appropriate standards. The Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written  
2 communications that qualify so that other portions of the material, documents,  
3 items or communications for which protection is not warranted are not swept  
4 unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited.  
6 Designations that are shown to be clearly unjustified or that have been made for an  
7 improper purpose (e.g., to unnecessarily encumber the case development process  
8 or to impose unnecessary expenses and burdens on other parties) may expose the  
9 Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that  
11 it designated for protection do not qualify for protection, that Designating Party  
12 must promptly notify all other Parties that it is withdrawing the inapplicable  
13 designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in  
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
17 under this Order must be clearly so designated before the material is disclosed or  
18 produced.

19 Designation in conformity with this Order requires:

20 (a) For information in documentary form (e.g., paper or electronic  
21 documents, but excluding transcripts of deposition or other pretrial or trial  
22 proceedings), that the Producing Party affix at a minimum, the legend "HIGHLY  
23 CONFIDENTIAL" (hereinafter "HIGHLY CONFIDENTIAL legend"), to each  
24 page that contains protected material. If only a portion or portions of the material  
25 on a page qualifies for protection, the Producing Party also must clearly identify  
26 the protected portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for  
28 inspection need not designate them for protection until after the inspecting Party

1 has indicated which documents it would like copied and produced. During the  
 2 inspection and before the designation, all of the material made available for  
 3 inspection shall be deemed “HIGHLY CONFIDENTIAL.” After the inspecting  
 4 Party has identified the documents it wants copied and produced, the Producing  
 5 Party must determine which documents, or portions thereof, qualify for protection  
 6 under this Order. Then, before producing the specified documents, the Producing  
 7 Party must affix the “HIGHLY CONFIDENTIAL legend” to each page that  
 8 contains Protected Material. If only a portion or portions of the material on a page  
 9 qualifies for protection, the Producing Party also must clearly identify the  
 10 protected portion(s) (e.g., by making appropriate markings in the margins).

11 (b) For testimony given in depositions that the Designating Party identify  
 12 the Disclosure or Discovery Material on the record, before the close of the  
 13 deposition all protected testimony.

14 (c) For information produced in some form other than documentary and  
 15 for any other tangible items, that the Producing Party affix in a prominent place on  
 16 the exterior of the container or containers in which the information is stored the  
 17 legend “HIGHLY CONFIDENTIAL.” If only a portion or portions of the  
 18 information warrants protection, the Producing Party, to the extent practicable,  
 19 shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 21 failure to designate qualified information or items does not, standing alone, waive  
 22 the Designating Party’s right to secure protection under this Order for such  
 23 material. Upon timely correction of a designation, the Receiving Party must make  
 24 reasonable efforts to assure that the material is treated in accordance with the  
 25 provision of this Order.

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6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this action. Such Protected Material may be disclosed only to the categories of person under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provision of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

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1           7.2   Disclosure of “HIGHLY CONFIDENTIAL” Information or Items.

2           Unless otherwise ordered by the court or permitted in writing by the  
3 Designating Party, a Receiving Party may disclose any information or item  
4 designated “HIGHLY CONFIDENTIAL” only to:

5           (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
6 as employees of said Outside Counsel of Record to whom it is reasonably  
7 necessary to disclose the information for this Action;

8           (b) the officers, directors, and employees (including House Counsel) of the  
9 Receiving Party to whom disclosure is reasonably necessary for this Action;

10          (c) Experts (as defined in this Order) of the Receiving Party to whom  
11 disclosure is reasonably necessary for this Action and who have signed the  
12 “Acknowledgement and Agreement to Be Bound” (Exhibit A);

13          (d) the court and its personnel;

14          (e) court reporters and their staff;

15          (f) professional jury or trial consultants, mock jurors, and Professional  
16 Vendors to whom disclosure is reasonably necessary for this Action and who have  
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18          (g) the author or recipient of a document containing the information or a  
19 custodian on or other person who otherwise possessed or knew the information;

20          (h) during their depositions, witnesses, and attorneys for witnesses, in the  
21 Action to whom disclosure is reasonably necessary provided: (1) the deposition  
22 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)  
23 they will not be permitted to keep any confidential information unless they sign the  
24 “Acknowledgement and Agreement to Be Bound” (Exhibit A), unless otherwise  
25 agreed by the Designating Party or ordered by the court. Pages of transcribed  
26 deposition testimony or exhibits to depositions that reveal Protected Material may  
27 be separately bound by the court reporter and may not be disclosed to any except  
28 as permitted under this Stipulated Protective Order;



(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussion.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “HIGHLY CONFIDENTIAL,” that Party must:

(a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) Cooperate with respect to all reasonable procedures sought to be pursue by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “HIGHLY CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

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1     9.     A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
 2     PRODUCED IN THIS LITIGATION

3           (a)     The terms of this Order are applicable to information produced by a  
 4     Non-Party in this Action and designated as “HIGHLY CONFIDENTIAL.” Such  
 5     information produced by Non-Parties in connection with this litigation is protected  
 6     by the remedies and relief provided by this Order. Nothing in these provisions  
 7     should be construed as prohibiting a Non-Party from seeking additional  
 8     protections.

9           (b)     In the event that a Party is required, by a valid discovery request, to  
 10    produce a Non-Party’s confidential information in its possession, and the Party is  
 11    subject to an agreement with the Non-Party to produce the Non-Party’s  
 12    confidential information, then the Party shall:

13           (1) Promptly notify in writing the Requesting Party and the Non-Party  
 14    that some or all of the information requested is subject to a confidentiality  
 15    agreement with a Non-Party;

16           (2) Promptly provide the Non-Party with a copy of the Stipulated  
 17    Protective Order in this Action, the relevant discovery request(s), and a reasonably  
 18    specific description of the information requested; and

19           (3) Make the information requested available for inspection by the Non-  
 20    Party, if requested.

21           (c)     If the Non-Party fails to seek a protective order from this court within  
 22    14 days of receiving the notice and accompanying information, the Receiving  
 23    Party may produce the Non-Party’s confidential information responsive to the  
 24    discovery request. If the Non-Party timely seeks a protective order, the Receiving  
 25    Party shall not produce any information in its possession or control that is subject  
 26    to the confidentiality agreement with the Non-Party shall bear the burden and  
 27    expense of seeking protection in this court of its Protected Material.  
 28

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under the Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this

1 Protective Order no Party waives any right it otherwise would have to object to  
 2 disclosing or producing any information or item on any ground not addressed in  
 3 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
 4 any ground to use in evidence of any of the material covered by this Protective  
 5 Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any  
 7 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
 8 may only be filed under seal pursuant to a court order authorizing the sealing of the  
 9 specific Protected Material at issue. If a Party's request to file Protected Material  
 10 under seal is denied by the court, then the Receiving Party may file the information  
 11 in the public record unless otherwise instructed by the court.

### 12 13 13. FINAL DISPOSITION

14 After the final disposition of this Action, as defined in paragraph 4, within  
 15 60 days of a written request by the Designating Party, each Receiving Party must  
 16 return all Protected Material to the Producing Party or destroy such material. As  
 17 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
 18 compilations, summaries, and any other format reproducing or capturing any of the  
 19 Protected Material. Whether the Protected Material is returned or destroyed, the  
 20 Receiving Party must submit a written certification to the Producing Party (and, if  
 21 not the same person or entity, to the Designating Party) by the 60-day deadline that  
 22 (1) identifies (by category, where appropriate) all the Protected Material that was  
 23 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
 24 copies, abstracts, compilations, summaries or any other format reproducing or  
 25 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
 26 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
 27 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
 28 and trial exhibits, expert reports, attorney work product, and consultant and expert

1 work product, even if such materials contain Protected Material. Any such archival  
2 copies that contain or constitute Protected Material remain subject to this  
3 Protective Order as set forth in Section 4 (DURATION).

4 14. Any violation of this Order may be punished by any and all appropriate  
5 measures including, without limitation, contempt proceedings and/or monetary  
6 sanctions.

7  
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9  
10 DATED: June 23, 2023

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12 

13 Attorneys for Plaintiff

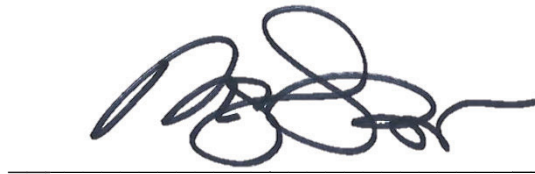
14  
15  
16 DATED: June 28, 2023

17  
18 /s/ Jacqueline Bruce Chinery

19 Attorneys for Defendant

20  
21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED

22  
23 DATED: July 25, 2023

24  
25 

26  
27 Honorable Margo A. Rocconi  
28 United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_ in the case of Jesse Santos Teixeira v. BMW of North America, LLC, Case No. 2:22-cv-02338 WLH (MARx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provision of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ of \_\_\_\_\_ [print or types full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_